BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEVEN F. MILLER	
Claimant VS.)) Dealest No. 202 744
BRB CONTRACTORS, INC.	Docket No. 202,741
Respondent AND	
BUILDERS' ASSOCIATION SELF INSURERS FUND Insurance Carrier)))

ORDER

Respondent appeals from a Preliminary Hearing Order of September 21, 1995, wherein Administrative Law Judge Floyd V. Palmer granted claimant benefits finding claimant had proven accidental injury arising out of and in the course of his employment with respondent.

ISSUES

Whether claimant suffered an accident on the date alleged.

(1) (2) Whether claimant's accidental injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The above enumerated issues are contained within K.S.A. 44-534a as appealable from preliminary hearing and, as such, this matter is properly before the Appeals Board.

Claimant, a heavy equipment operator for respondent, suffered an alleged injury on March 20, 1995 when he fell from a dump truck, landing on his right side. Since that time claimant has experienced difficulty, including pain, numbness and loss of use on his right side involving his arm, fingers, shoulders, hip, low back and neck. Claimant has been provided medical treatment with numerous health care providers.

Respondent alleges claimant should be denied benefits as claimant was shown to have misstated the truth on several occasions during his testimony before the Administrative Law Judge. In particular, claimant appeared to have lied about the number of times he went fishing during the summer of 1995, and whether or not he owned a fishing boat of his own. There was also discussion regarding specific information claimant

provided to his employer and certain insurance representatives during his pre-employment interview and during the investigation of his alleged injury. While the Appeals Board acknowledges discrepancies exist in claimant's testimony, this does not alter the fact that claimant's testimony, regarding the actual fall on March 20, 1995, remains basically uncontradicted. As such, the Appeals Board finds there is sufficient evidence in the record to support a finding that claimant has met his burden of proving that he suffered accidental injury on or about March 20, 1995, which arose out of and in the course of his employment with respondent.

The respondent's contentions regarding claimant's contradictory statements made to the various doctors, and the doctor's opinions regarding symptom magnification, or falsification of symptoms by claimant, leads more to the issue of the nature and extent of claimant's injury and disability which is not an issue before the Appeals Board at this time. As such, these matters will not be commented upon by the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated September 21, 1995, shall be, and is hereby, affirmed.

II IS SO ORDERED.		
Dated this day of	f December 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	DOADD MEMBED	
	BOARD MEMBER	

c: George H. Pearson III, Topeka, Kansas Wade A. Dorothy, Lenexa, Kansas Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director